CTA Form No. 8 (For DCC)

23-000383-0005

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1081

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

PGU GENERAL MERCHANDISE, INC., FOOK SEONG YONG and ROCELLE FRANCISCO,
Accused.

NOTICE OF RESOLUTION

To:

PROSECUTOR GENERAL BENEDICTO A. MALCONTENTO
ASST. STATE PROSECUTOR ROBERT D.G. ONG, JR.
Department of Justice
DOJ Building, Padre Faura Street
Ermita, Manila

COMMISSIONER OF INTERNAL REVENUE
Thru: Prosecution Division
Room 704, BIR National Office Buiding
BIR Road, Diliman, Quezon City

ATTY. RAMON B. LORENZO
ATTY. ROWELL B. VICENTE
Bureau of Internal Revenue - Revenue Region No. 6
BIR Bldg., I, Solana Street, Intramuros
Manila

GREETINGS:

You are hereby notified by these presents that on **February 27, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 28, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA Crim. Case No. **O-1081**
	For: Violation of Section 255 of the NIRC of 1997, as amended
- versus -	Members:
PGU GENERAL MERCHANDISE, INC., FOOK SEONG YONG and ROCELLE FRANCISCO, Accused.	**DEL ROSARIO**, P.J., *Chairperson*, **BACORRO-VILLENA**, *and* **CUI-DAVID**, JJ.
	Promulgated: FEB 2 7 2024, 8:40AM

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RESOLUTION

For the Court's resolution is plaintiff's "Motion for Reconsideration with Leave of Court and Entry of Appearance (Re: Resolution dated 12 October 2023)" (**MR**) filed on 05 January 2024, without comment/opposition thereto from all of the accused. The MR assails this Court's Resolution dated 12 October 2023 (**assailed Resolution**), which dismissed the instant case against the said accused on the ground that the criminal offense charged has already prescribed.

In the MR, plaintiff merely argues that its right to prosecute the accused has not yet prescribed as the filing of the complaint for preliminary investigation before the Department of Justice (DOJ) has tolled the running of the prescription period for offenses.

We resolve.

Indeed, the general rule is that the prescriptive periods for criminal offenses are tolled by the filing of a criminal complaint, or information.[1] However, Article 91 of the Revised Penal Code (**RPC**),[2] in relation to Section 281[3] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, clearly poses an exception to the general rule.

As discussed in the assailed Resolution, by virtue of Section 281, of the NIRC of 1997, as amended, the prescription of the offense of willful failure to pay tax is counted from the time of the offense's commission and is interrupted by the institution of judicial proceedings in court for its prosecution as explained in the case of *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.*[4](**Lim Sr.**). Considering that the application of *Lim Sr.* to the instant case has already been exhaustively discussed in the assailed Resolution, the Court shall no longer engage in a lengthy disquisition of the same matter.

Furthermore, basic is the rule in our jurisdiction that in case of irreconcilability, the provisions of special laws (such as the NIRC of 1997, as amended) prevail over the provisions of a general statute on a specific subject that they both cover. This is not to say that our tax laws have repealed general provisions of the RPC insofar as criminal tax offenses are concerned but an exception is undoubtedly carved in favor of the former.

In *Rosario Valera, assisted by her husband, Juan Valera v. Mariano Tuason, Jr., Justice of the Peace of Lagayan, Abra, et al.*[5], the Supreme Court explained, thusly:

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1 Article 91 of the Revised Penal Code.

2 **Art. 91.** *Computation of prescription of offenses.* - The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

3 **SEC. 281.** *Prescription for Violations of any Provision of this Code.* - All violations of any provision of this Code shall prescribe after five (5) years.

Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

The term of prescription shall not run when the offender is absent from the Philippines.

4 G.R. Nos. L-48134-37, 18 October 1990.

5 G.R. No. L-1276, 30 April 1948.

> . . .
> ... [G]ranting then that the two laws cannot be reconciled, in so far as they are inconsistent with each other, [S]ection 73 of the Code of Civil Procedure, being a specific law, should prevail over, or considered as an exemption to, [S]ection 211 of the Administrative Code, which is a provision of general character. [A] general law is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class, while a special act is one which relates to particular persons or things of a class.
> . . .

Considering that Section 281 of the NIRC of 1997, as amended, and the Supreme Court's ruling in *Lim Sr.* remain relevant and in effect, the Court is left with no new matter to consider.

WHEREFORE, in light of the foregoing considerations, plaintiff's "Motion for Reconsideration with Leave of Court and Entry of Appearance (Re: Resolution dated 12 October 2023)" filed on 05 January 2024 is hereby **DENIED** for lack of merit.

Meanwhile, the **ENTRY OF APPEARANCE** of Special Prosecutors, Atty. Ramon B. Lorenzo and Atty. Rowell B. Vicente, as plaintiff's counsels is **NOTED**. Accordingly, let copies of orders, resolutions, judgment and other papers be furnished to Atty. Ramon B. Lorenzo and Atty. Rowell B. Vicente of the Legal Division of the Bureau of Internal Revenue (**BIR**), Revenue Region No. 6, with address at BIR Bldg. I, Solana Street, Intramuros, Manila.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON OFFICIAL BUSINESS
LANEE S. CUI-DAVID
Associate Justice